

AN ACT

ENTITLED, An Act to repeal certain mandatory minimum sentences for driving under the influence, to expand those substances under which a person may be found to be under the influence, and to revise certain driving under the influence provisions for clarity and consistency.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

Section 1. That § 32-23-1 be amended to read as follows:

32-23-1. No person may drive or be in actual physical control of any vehicle while:

- (1) There is 0.08 percent or more by weight of alcohol in that person's blood as shown by chemical analysis of that person's breath, blood, or other bodily substance;
- (2) Under the influence of an alcoholic beverage, marijuana, or any controlled drug or substance not obtained pursuant to a valid prescription, or any combination of an alcoholic beverage, marijuana, or such controlled drug or substance;
- (3) Under the influence of any controlled drug or substance obtained pursuant to a valid prescription, or any other substance, to a degree which renders the person incapable of safely driving;
- (4) Under the combined influence of an alcoholic beverage and or any controlled drug or substance obtained pursuant to a valid prescription, or any other substance, to a degree which renders the person incapable of safely driving; or
- (5) Under the influence of any substance ingested, inhaled, or otherwise taken into the body as prohibited by § 22-42-15.

Section 2. That § 32-23-1.1 be amended to read as follows:

32-23-1.1. A law enforcement officer may, without a warrant, arrest a person for a violation of the provisions of § 32-23-1 when the officer has probable cause to believe that the person to be arrested has been involved in a traffic accident and has violated the provisions of § 32-23-1 and that

such violation occurred prior to or immediately following such traffic accident.

Section 3. That § 32-23-1.2 be amended to read as follows:

32-23-1.2. Every person operating a vehicle which has been involved in an accident or which is operated in violation of any of the provisions of this chapter shall, at the request of a law enforcement officer, submit to a breath test to be administered by such officer. If such test indicates that such operator has consumed alcohol, the law enforcement officer may require such operator to submit to a chemical test in the manner set forth in this chapter.

Section 4. That § 32-23-2 be amended to read as follows:

32-23-2. If conviction for a violation of § 32-23-1 is for a first offense, such person is guilty of a Class 1 misdemeanor, and the defendant's driving privileges shall be revoked for not less than thirty days. However, the court may in its discretion issue an order upon proof of financial responsibility, pursuant to § 32-35-113, permitting the person to operate a vehicle for purposes of employment, attendance at school, or attendance at counseling programs. The court may also order the revocation of the defendant's driving privilege for a further period not to exceed one year or restrict the privilege in such manner as it sees fit for a period not to exceed one year.

Section 5. That § 32-23-2.1 be amended to read as follows:

32-23-2.1. Any person convicted of a first offense pursuant to § 32-23-1 with a 0.17 percent or more by weight of alcohol in the person's blood shall, in addition to the penalties provided in § 32-23-2, be required to undergo a court-ordered evaluation to determine if the defendant is chemically dependent. The cost of such evaluation shall be paid by the defendant.

Section 6. That § 32-23-3 be amended to read as follows:

32-23-3. If conviction for a violation of § 32-23-1 is for a second offense, such person is guilty of a Class 1 misdemeanor, and the court shall, in pronouncing sentence, unconditionally revoke the defendant's driving privilege for a period of not less than one year. However, upon the successful

completion of a court-approved chemical dependency program, and proof of financial responsibility pursuant to § 32-35-113, the court may permit the person to drive for the purposes of employment, attendance at school, or attendance at counseling programs. If such person is convicted of driving without a license during that period, the person shall be sentenced to the county jail for not less than three days, which sentence may not be suspended.

Section 7. That § 32-23-4 be amended to read as follows:

32-23-4. If conviction for a violation of § 32-23-1 is for a third offense, the person is guilty of a Class 6 felony, and the court, in pronouncing sentence, shall order that the driver's license of any person so convicted be revoked for a period of not less than one year from the date sentence is imposed or one year from the date of initial release from imprisonment, whichever is later. In the event the person is returned to imprisonment prior to the completion of the period of driver's license revocation, time spent imprisoned does not count toward fulfilling the period of revocation. If the person is convicted of driving without a license during that period, he shall be sentenced to the county jail for not less than ten days, which sentence may not be suspended. Notwithstanding § 23A-27-19, the court retains jurisdiction to modify the conditions of the license revocation for the term of such revocation. Upon the successful completion of a court-approved chemical dependency counseling program, and proof of financial responsibility pursuant to § 32-35-113, the court may permit the person to operate a vehicle for the purposes of employment, attendance at school, or attendance at counseling programs.

Section 8. That § 32-23-4.3 be amended to read as follows:

32-23-4.3. The plea and election of method of trial by the accused shall be first taken only on the first part of the information described in § 32-23-4.2 but before a plea is made the accused shall be informed by the judge, in absence of the jury, of the contents of the second part. There shall be entered in the minutes of the court the time and place when and where the judge so informed the

accused, and like entry thereof shall be made in the judgment.

Section 9. That § 32-23-4.4 be amended to read as follows:

32-23-4.4. On a finding of guilty on the first part of the information described in § 32-23-4.2 a plea shall be taken and, if necessary, an election made on the second part and a trial thereon proceeded with, and until such time no information as to the second part of the information may be divulged to the jury. If the accused elects a jury trial in the second part of the information, such trial may be had to the same or another jury as the court may direct.

Section 10. That § 32-23-4.6 be amended to read as follows:

32-23-4.6. If conviction for a violation of § 32-23-1 is for a fourth offense and the person has previously been convicted of a felony under § 32-23-4, the person is guilty of a Class 5 felony, and the court, in pronouncing sentence, shall order that the driver's license of any person so convicted be revoked for a period of not less than two years from the date sentence is imposed or two years from the date of initial release from imprisonment, whichever is later. In the event the person is returned to imprisonment prior to the completion of the period of driver's license revocation, time spent imprisoned does not count toward fulfilling the period of revocation. If the person is convicted of driving without a license during that period, the person shall be sentenced to the county jail for not less than twenty days, which sentence may not be suspended. Notwithstanding § 23A-27-19, the court retains jurisdiction to modify the conditions of the license revocation for the term of such revocation. Upon the successful completion of a court-approved chemical dependency counseling program, and proof of financial responsibility pursuant to § 32-35-113, the court may permit the person to operate a vehicle for the purposes of employment, attendance at school, or attendance at counseling programs.

Section 11. That § 32-23-4.7 be amended to read as follows:

32-23-4.7. If conviction for violation of § 32-23-1 is for a fifth offense, or subsequent offenses

thereafter, and the person has previously been convicted of a felony under § 32-23-4, the person is guilty of a Class 4 felony and the court, in pronouncing sentencing, shall order that the driver's license of any person so convicted be revoked for a period of not less than three years from the date sentence is imposed or three years from the date of initial release from imprisonment, whichever is later. In the event the person is returned to imprisonment prior to the completion of the period of driver's license revocation, time spent imprisoned does not count toward fulfilling the period of revocation. If the person is convicted of driving without a license during that period, the person shall be sentenced to the county jail for not less than twenty days, which sentence may not be suspended. Notwithstanding § 23A-27-19, the court retains jurisdiction to modify the conditions of the license revocation for the term of such revocation. Upon the successful completion of a court-approved chemical dependency counseling program, and proof of financial responsibility pursuant to § 32-35-113, the court may permit the person to operate a vehicle for the purposes of employment, attendance at school, or attendance at counseling programs.

Section 12. That § 32-23-6 be amended to read as follows:

32-23-6. The fact that any person charged with a violation of § 32-23-1 is or has been prescribed a drug under the laws of this state is not a defense against any charge of violating § 32-23-1.

Section 13. That § 32-23-7 be amended to read as follows:

32-23-7. In any criminal prosecution for a violation of § 32-23-1 relating to driving a vehicle while under the influence of an alcoholic beverage, a violation of § 22-16-41, or a violation of § 22-16-42, the amount of alcohol in the defendant's blood at the time alleged as shown by chemical analysis of the defendant's blood, breath, or other bodily substance gives rise to the following presumptions:

- (1) If there was at that time five hundredths percent or less by weight of alcohol in the defendant's blood, it is presumed that the defendant was not under the influence of an

alcoholic beverage;

- (2) If there was at that time in excess of five hundredths percent but less than eight hundredths percent by weight of alcohol in the defendant's blood, such fact does not give rise to any presumption that the defendant was or was not under the influence of an alcoholic beverage, but such fact may be considered with other competent evidence in determining the guilt or innocence of the defendant;
- (3) If there was at that time eight hundredths percent or more by weight of alcohol in the defendant's blood, it is presumed that the defendant was under the influence of an alcoholic beverage.

Percent by weight of alcohol in the blood shall be based upon milligrams of alcohol per 1.0 cubic centimeter of whole blood or 2100 cubic centimeters of deep lung breath.

Section 14. That § 32-23-8 be amended to read as follows:

32-23-8. The provisions of § 32-23-7 may not be construed as limiting the introduction of any other competent evidence bearing upon the question whether or not the defendant was under the influence of an alcoholic beverage.

Section 15. That chapter 32-23 be amended by adding thereto a NEW SECTION to read as follows:

Any driving permit issued by the court to any person, who has been convicted of a violation of § 32-23-1 within the last ten years or any driving permit issued pursuant to § 32-23-2, if that person had 0.17 percent or more by weight of alcohol in that person's blood, shall be conditioned on the person's total abstinence from the use of alcohol. The court shall immediately revoke the permit upon a showing of proof by a preponderance of the evidence that the person has violated this condition.

Section 16. That § 22-16-41 be amended to read as follows:

22-16-41. Any person who, while under the influence of an alcoholic beverage, any controlled

drug or substance, marijuana, or a combination thereof, without design to effect death, operates or drives a motor vehicle of any kind in a negligent manner and thereby causes the death of another person, including an unborn child, is guilty of vehicular homicide. Vehicular homicide is a Class 3 felony. In addition to any other penalty prescribed by law, the court shall order that the driver's license of any person convicted of vehicular homicide be revoked for a period of not less than ten years from the date sentence is imposed or ten years from the date of initial release from imprisonment, whichever is later. In the event the person is returned to imprisonment prior to the completion of the period of driver's license revocation, time spent imprisoned does not count toward fulfilling the period of revocation.

Section 17. That § 22-18-36 be amended to read as follows:

22-18-36. Any person who, while under the influence of an alcoholic beverage, any controlled drug or substance, marijuana, or a combination thereof, without design to effect serious bodily injury, operates or drives a motor vehicle of any kind in a negligent manner and thereby causes the serious bodily injury of another person, including an unborn child, is guilty of vehicular battery. Vehicular battery is a Class 4 felony. In addition to any other penalty prescribed by law, the court shall order that the driver's license of any person convicted of vehicular battery be revoked for a period of not less than three years from the date sentence is imposed or three years from the date of initial release from imprisonment, whichever is later. In the event the person is returned to imprisonment prior to the completion of the period of driver's license revocation, time spent imprisoned does not count toward fulfilling the period of revocation.

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I certify that the attached Act
originated in the

HOUSE as Bill No. 1119

Chief Clerk
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Speaker of the House

Attest:

Chief Clerk

President of the Senate

Attest:

Secretary of the Senate

House Bill No. 1119
File No. _____
Chapter No. _____

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Received at this Executive Office
this _____ day of _____ ,

20____ at _____ M.

By _____
for the Governor
=====

The attached Act is hereby
approved this _____ day of
_____, A.D., 20____

Governor
=====

STATE OF SOUTH DAKOTA,
ss.
Office of the Secretary of State

Filed _____, 20____
at _____ o'clock __ M.

Secretary of State

By _____
Asst. Secretary of State